

MEMORANDUM ENDORSED
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***CONSENT MOTION FOR ADJOURNMENT
OF CONFERENCE AND TO AMEND COMPLAINT***

BY ECF

Honorable Gregory H. Woods, U.S.D.J.
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: Akbar Ali Greene, et. al. v. Teitel Bros., Inc., et. al.
Case No. 22 Civ. 723 (GHW)

Dear Judge Woods,

We are counsel to plaintiffs in the above-referenced action brought pursuant to the Fair Labor Standards Act and New York Labor Law. This letter is sent pursuant to the court's Individual Practices, Sec. 1(E) and 2(C)(i), for an adjournment of the hearing scheduled for November 7, 2022 [Docket 58]; and for an order to permit plaintiffs leave to file a second amended complaint.

The parties conferred and the defendants have consented to the adjournment and to plaintiffs' request to amend the complaint. To be clear the plaintiffs do not request any other modification of the scheduling order in effect, at Docket 47, and no parties will be added. Plaintiffs request one (1) week following the court's approval of this request, to file the amended complaint.

The amended complaint, a draft of which was provided to defense counsel, removes the collective action allegations contained in the first amended complaint, and adds causes of action for retaliation on behalf of Plaintiff Juan Marquez, who was terminated on October 27, 2022. Mr. Marquez believes his termination was because he joined the lawsuit and refused to drop out of it,

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even after his weekly salary was reduced. The purported reasons, provided to him by text message while he was on vacation last week, are pretextual.¹

Regarding the scheduled upcoming hearing, the parties conferred and jointly propose November 15, 16, or 18 as alternate dates, or as soon thereafter as the court is available. Peter Cooper is going to be away on November 7th, but if the court is not available on the proposed dates, he will endeavor to find a quiet place and appear as directed.

Thank you for your consideration of this matter.

Respectfully submitted,
CILENTI & COOPER, PLLC

/s/ Peter Hans Cooper

By: _____
Peter H. Cooper, Esq.

cc: All Counsel (Via ECF)

Plaintiffs' request to adjourn the conference scheduled for November 7, 2022 is denied. The Court declines to act on plaintiffs' application for leave to file a second amended complaint. Federal Rule of Civil Procedure 15(a)(2) provides that "a party may amend its pleading only with the opposing party's consent *or* the court's leave." (emphasis added). The Court understands that the opposing party has consented to the proposed amendment of the complaint. As a result, the Court does not believe that a Court order is required to approve the proposed amendment, which has not been presented to the Court for consideration.

The Clerk of Court is directed to terminate the motion pending at Dkt. No. 59.

SO ORDERED.

Dated: November 4, 2022
New York, New York



GREGORY H. WOODS
United States District Judge

¹ Mr. Marquez and the other plaintiffs are aware that plaintiff Nejel Moreno accepted a settlement and returned to work at Teitel Bros. The Rule 68 offer represents a fraction of what Mr. Moreno was owed in unpaid overtime compensation. *Compare*, Docket 44, 55-1.